

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ROBERT DeSHIELDS,)
v.) Civil Action No. 2: 17-cv-0784
)
) United States Senior Judge
) Joy Flowers Conti
MICHAEL ZAKEN,)
MARK DIALESANDRO,)
OFFICER ALBAN, SHELLY MANKEY,)
S. LONGSTRETH, and MS. CONGELIO,)
All sued in their Individual and Official)
Capacity,)
)
Defendants.

OPINION

Introduction

This case was referred to a United States magistrate judge for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Local Rules of Court 72.C and 72.D.

On May 12, 2020, the magistrate judge filed a Report and Recommendation (“R&R”) (ECF No. 93), recommending that the summary judgment motion filed by plaintiff Robert DeShields (“DeShields”) (ECF No. 76) be denied. The parties were informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Local Rule of Court 72.D.2, failure to file timely objections would constitute a waiver of appellate rights. No timely objections were filed. On June 15, 2020, the court adopted the R&R as the opinion and order of the court (ECF Nos. 94, 95).

On June 22, 2020, the magistrate judge issued an order scheduling a case management conference for July 8, 2020. DeShields failed to participate. On July 9, 2020, the magistrate judge ordered DeShields to show cause why this case should not be dismissed for failure to comply with the court’s order dated June 22, 2020. The deadline for DeShields to respond was

July 24, 2020 (ECF No. 96). DeShields failed to respond.

On July 27, 2020, the magistrate judge issued an R&R recommending that the case be dismissed for failure to prosecute (ECF No. 99). DeShields' deadline to file objections to the R&R was August 13, 2020. DeShields did not file timely objections. Instead, DeShields filed an untimely motion for extension of time to file his objections (ECF No. 100). The envelope was time-stamped on August 14, 2020 (ECF No. 100-1).¹ The court, nevertheless, granted DeShields' motion for an extension of time and ordered him to file his objections to the R&R by October 30, 2020.

DeShields did not file objections to the R&R on or before October 30, 2020. As of the date of this opinion and order, DeShields has not engaged in any activity of record in this case since his motion for an extension of time in August 2020.

Legal Analysis

Even if no objections are filed, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b), advisory committee notes; *see McClain v. Penn. Dept. of Corr.*, No. 1:19-CV-1951, 2020 WL 1690081, at *1 (M.D. Pa. Apr. 7, 2020); *Univac Dental Co. v. Dentsply Intern., Inc.*, 702 F. Supp. 2d 465, 469 (M.D. Pa. 2010) (explaining that judges should review dispositive legal issues raised by the R&R for clear error).

Following an independent review of the record, the court is satisfied that the R&R (ECF No. 99) contains no clear error and will therefore accept the recommendation of the magistrate judge to dismiss this case for failure to prosecute. The court will adopt the R&R as the opinion

¹ The court notes that the mailing address on the envelope is the same address to which the court sent copies of its opinions and orders.

of the court, as supplemented herein. As reflected by the docket, DeShields failed to comply with numerous court orders, despite being given more time and multiple opportunities. It is readily apparent that DeShields has abandoned this case. The magistrate judge's consideration and weighing of the *Poulis* factors was correct.

Conclusion

For the reasons set forth in the magistrate judge's R&R (ECF No. 99), which will be adopted as the opinion of this court as supplemented herein, this case will be dismissed with prejudice for failure to prosecute.

An appropriate order will be entered.

BY THE COURT:

Dated: January 12, 2021

/s/ Joy Flowers Conti
Joy Flowers Conti
Senior United States District Court Judge